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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,198	09/10/2003	Henri E. Lemeur JR.	112440.01	3219

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EXAMINER

KYLE, MICHAEL J

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/658,198	LEMEUR ET AL.	
	Examiner	Art Unit	
	Michael J Kyle	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 28, 29, and 33 is/are rejected.
- 7) ☒ Claim(s) 24-27 and 30-32 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/10/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 20-23, 28, 29 and 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,425,161 to LeMeur et al ("LeMeur") in view of US Patent No. 5,347,680 to Rippe. LeMeur discloses applicant's invention except for the at least one adjustment member. Rippe teaches an industrial caster wheel assembly having an adjustment member (68/22) placed in contact with a second axle (56) to press the second axle directly against an elastomeric support member (18) for the purpose of adjusting the preload pressure on the caster assembly (column 4, lines 12-22). The adjustment member (68/22) moves the second axle in a first direction (biased toward the spring) while compressing the elastomeric support member (18) and also moves a plurality of side plates (14, 15) relative to a housing (12) (see figures 1-3). The adjustment member is threaded into a threaded hole in the housing. It would have been obvious to one having ordinary

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skill in the art at the time of the invention to modify LeMeur's invention with an adjustment member for the purpose of adjusting the caster assembly to a desired preload (column 4, lines 12-22). With regard to claim 33, because the "second adjustment member" is the only adjustment member claimed, examiner considers the adjustment member discussed above to read on this limitation.

3. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,425,161 to LeMeur et al ("LeMeur") in view of U.S. Patent No. 6,279,199 to Plate. LeMeur discloses applicant's invention except for the adjustment member. Plate teaches an industrial caster wheel assembly having an adjustment member (40) placed in contact with a second axle (one of 44) to press the second axle indirectly against an elastomeric support member (78) for the purpose of providing a uniform biasing force on the caster as the vertical position of the caster wheel is adjusted (column 1, lines 14-25). The adjustment member moves the second axle in a first direction (vertically along 32) while compressing the elastomeric support member and moving a plurality of side plates (52) relative to a housing (24). When the side plates move, the height of the caster assembly is reduced. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to incorporate an adjustment member for the purpose of balancing and equalizing out forces upon the caste regardless of its vertical position.

Allowable Subject Matter

4. Claims 24-27 and 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to adjustable caster assemblies: Lambertz, Offterdinger, and Helmick.

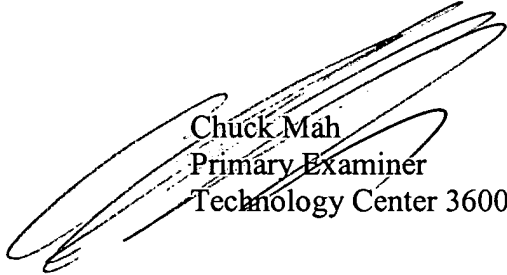
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Kyle whose telephone number is 703-305-3614. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm. The examiner may be reached at 571-272-7057 after March 31, 2005, when the move to The Office's Carlyle Campus in Alexandria, VA, is completed.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mk



Chuck Mah
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